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6 Attorneys for Defendants  
ETHICON, INC. (on its own behalf and behalf of its  
7 Division, ETHICON WOMEN'S HEALTH &  
UROLOGY, and erroneously sued as GYNECARE,  
8 INC.); and JOHNSON & JOHNSON

9  
10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 OAKLAND DIVISION

13 DIANE McIRVIN, an individual; and  
14 ALICE GALE WILSON, an individual,

15 Plaintiffs,

16 v.

17 GYNECARE, INC., a California  
corporation; ETHICON, INC., a New  
18 Jersey corporation; JOHNSON &  
JOHNSON, INC., a New Jersey  
19 corporation; and DOE MANUFACTURES  
ONE through ONE HUNDRED,

20 Defendants.  
21

Case No. CV 11-00697 PJH

**[PROPOSED] ORDER GRANTING  
DEFENDANTS' MOTION TO SEVER  
UNDER RULE 21 AND TRANSFER  
UNDER 28 U.S.C. § 1406(a) OR, IN THE  
ALTERNATIVE, 28 U.S.C. § 1404(a)**

Date: April 6, 2011  
Time: 9:00 a.m.  
Place: Courtroom 3  
Judge: Hon. Phyllis J. Hamilton

Complaint Filed:  
Trial Date: Not set

On April 6, 2011, Defendants Ethicon, Inc. (on its own behalf and behalf of its division, Ethicon Women's Health & Urology erroneously sued as Gynecare, Inc.) and Johnson & Johnson's (collectively "Defendants") Motion To Sever Under Rule 21 and Transfer Under 28 U.S.C. § 1406(a) Or, In The Alternative, 28 U.S.C. § 1404(a) came for hearing before this Court. All parties were given notice and an opportunity to be heard, and each party was represented at the hearing by its counsel of record. Having reviewed all of the papers and evidence filed in support of and in opposition to Defendants' Motion and for good cause shown:

**IT IS HEREBY ORDERED THAT** Defendants' Motion is **GRANTED**.

Rule 20(a) permits joinder only where plaintiffs assert claims "arising out of the same transaction, occurrence, or series of transactions or occurrences; and any question of law or fact common to all those persons will arise in the action." Fed. R. Civ. P. 20(a). Plaintiffs Diane McIrvin and Alice Gale Wilson have been impermissibly joined and are therefore severed pursuant to Federal Rule of Civil Procedure, Rule 21.

Further, 28 U.S.C. § 1406(a) provides that a district court must dismiss or, if in the interests of justice, transfer a case laying venue in the wrong district. 28 U.S.C. § 1404(a) provides that "[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."

Transfer of the claims of Diane McIrvin Alice Gale Wilson is appropriate because: (1) venue is not proper in the Northern District of California and the plaintiffs could not have brought this action here; (2) venue is proper in plaintiffs' home districts; (3) Diane McIrvin resides in the Southern District of California and Alice Gale Wilson resides in Northern District of Indiana; (4) critical witnesses and documents are located in each plaintiff's home district; and (5) each plaintiff's home district is more likely to be familiar with the applicable substantive law of this action.

Plaintiff Diane McIrvin is **HEREBY SEVERED** and the resulting action is **HEREBY TRANSFERRED** to the United States District Court for the Southern District of California.

Plaintiff Alice Gale Wilson is **HEREBY SEVERED** and the resulting action is

1 **HEREBY TRANSFERRED** to the United States District Court for the Northern District of  
2 Indiana. THE APRIL 6, 2011 HEARING DATE IS VACATED.

3 **IT IS SO ORDERED.**

4 Dated: 4/4/11

BY THE COURT

